

**Utah Solid and Hazardous Waste Control Board
MEETING MINUTES**

May 8, 2008

The Board meeting was held in conjunction with a morning tour of the Dugway Proving Ground Facility in Dugway, Utah.

Board members present on the tour: Carlton Christensen (Chair), John Newman (Vice Chair), Craig Anderson, Kory Coleman, Jeff Coombs, Ryan Dupont, Dennis Riding.

Others present on the tour: Brad Johnson, Scott Anderson, Raymond Wixom, Martin Gray, David Larsen.

Scott Reed, Dugway Installation Restoration Program Manager, Jason Reed, Dugway Compliance Manager, and Keller Davis, Shaw Corp, Utah Program Manager, conducted the tour. No discussion of any agenda items or Board actions occurred during the tour and no general public attended the tour. A handout of the Dugway Proving Ground, Installation Restoration Program, Site Visit 8 May 2008, was distributed to the Board members. A copy is available with the meeting minutes.

Tooele County Health Department
151 North Main Street (Conference Room B107)
Tooele, Utah
MEETING MINUTES
May 8, 2008
2:00 P.M.

Board Members Present: Carlton Christensen (Chair), John Newman (Vice Chair), Craig Anderson, Scott Bruce, Kory Coleman, Jeff Coombs, Ryan Dupont, Dennis Riding.

Board Members Excused: Michael Brehm, Craig Forster, Gary Mossor, Kevin Murray, Rick Sprott.

Staff Members Present: Scott Anderson, Brad Johnson, Gary Astin, Shane Bekkemellom, Therron Blatter, Martin Gray, David Larsen, Arlene Lovato, Dale Marx, Terry Montgomery, Raymond Wixom.

Others Present: Becki Bryant, Walton Levi, Jim Wilcox, Kris Snow.

I. Call to Order

Carlton Christensen (Chair) called the meeting to order at 2:00 p.m. Mr. Christensen excused the following Board members: Michael Brehm, Craig Forster, Gary Mossor, Kevin Murray, and Rick Sprott. Mr. Christensen also excused Dennis Downs and noted that Scott Anderson is Acting Executive Secretary for Dennis Downs.

Mr. Christensen thanked Jeff Coombs and his staff for handling the meeting location logistics and the support staff for coordinating and providing the lunch.

II. Discussion of morning field trip activities

Mr. Christensen thanked Division staff and representatives from Dugway for coordinating and conducting the tour of Dugway. Mr. Christensen felt it was a very productive visit, as it was very interesting to witness the facility first hand and observe the challenges the facility has had to overcome. Mr. Christensen commented that it was interesting to see a city within a city. Board members also stated that it was well worth their time to tour this facility and all were very impressed.

III. Approval of Meeting Minutes for the March 13, 2008 Board meeting (Board Action Item)

Kory Coleman moved to approve the March 13, 2008, Board meeting minutes. The motion was seconded by Dennis Riding and **UNANIMOUSLY CARRIED.**

IV. Board training in the requirements of the Utah Open and Public Meetings Act

Raymond Wixom reminded the Board of the Chairman's statutory responsibility to make sure the entire Board receives annual training on the Open and Public Meetings Act. Mr. Wixom also noted that the Attorney General's Office is required to give notice at least yearly to Board members of material changes to requirements for conducting meetings under the Open and Public Meetings Act. Mr. Wixom suggested the Board address both requirements at the same time. Mr. Wixom referred Board members to an Executive Summary that indicated there were no material changes to the Open and Public Meetings Act in the 2008 General Session of the Utah State Legislature.

Mr. Wixom stated that if a quorum is present (seven out of the 13 members), either physically or electronically, to conduct Board business, it is subject to the Open and Public Meetings Act. As an example, Mr. Wixom noted that the morning trip to Dugway was considered an open and public meeting and written minutes are required to be prepared.

Mr. Wixom gave an overview of the Open and Public Meetings Act requirements including public notice requirements, recording and preparing written meeting minutes (including when Board tours are conducted), closed meetings, a chance or social meeting of a public body (not subject to the Act if Board related issues are not discussed) and electronic notices. Mr. Wixom clarified that if Board members happen to run in to each other in a social setting, it is not a meeting. Mr. Wixom also encouraged all Board members to refrain from conducting any Board business during these chance encounters.

Mr. Wixom further instructed the Board that the Open and Public Meetings Act requires public notice to be given, at least once a year, for a public body which holds regular meetings that are scheduled in advance over the course of a year. The Division staff handles this requirement.

Mr. Wixom reminded the Board of the creation of the Utah Public Notice Website designed to assist the public to find, search, and subscribe to posted public notices of any public body in the State. The statute required State agencies to begin posting in April 2008. However, this timeframe has changed, and all State agencies must begin posting by October 1, 2008. Although not required, the Division's Administrative Secretary, Arlene Lovato, has posted the Board's agenda on the public notice website for this meeting. The website address is <http://pmn.utah.gov> and provides greater accessibility to the public meeting information and therefore encourages greater participation by the public.

John Newman requested clarification on chance meetings and conversations. Mr. Newman asked if a chance meeting would only be called into question if a quorum is present. Mr. Wixom responded that, even though the Board cannot take an action without a quorum present, and even if a quorum is not present, conversations or discussions could give the appearance of impropriety and could be a potential problem. For example, if a member of the general public overhears the conversations, there is the potential for criticism.

Mr. Newman asked if calling another Board member to discuss a particular agenda item is any different than a conversation held in a public setting. Mr. Wixom stated that he can not draw a distinction, but strongly encouraged all Board members to do Board business in the Board's presence only where proper public notice is given and to use their good judgment.

Mr. Wixom then continued by presenting the Board members with a brief overview of what typically occurs at an administrative hearing and how it operates when a request for intervention has been made to the Board. Included in the overview were the proper procedures on how to handle evidence and/or exhibits presented in the hearing, the appropriate way of managing testimony, the protocol on how to ask questions of witnesses, and what occurs after an administrative hearing has been held and a decision has been made by the Board.

V. Underground Storage Update

Brad Johnson informed the Board members that although the Gunnison Top-Stop cleanup has impacted the cash balance of the Petroleum Storage Tank Fund, the balance has increased to 11.8 million dollars over the last few months. Wind River Petroleum (Wind River) has submitted a Corrective Action Plan (CAP) for the cleanup of the release, which the Division of Environmental Response and Remediation (Division) has reviewed and approved. Wind River will now conduct a 30-day public comment period on the CAP. Once completed, the Division will review any comments that are received and will require Wind River to make any necessary changes in order to approve and move forward with the correction action. Most of the correction action measures detailed in the plan are already being implemented at the facility. It is estimated that at this point, approximately 9,000 gallons out of the 20,000 gallon release have been extracted from the ground.

Mr. Johnson also informed the Board that the Division did hold a meeting of the Utah Underground Storage Tank (UST) Advisory Task Force (UST Task Force) meeting on April 9, 2008. In the meeting, the main topics of discussions included rules for secondary containment and the owner/operator training requirements of the Federal Energy Policy Act of 2005 (Energy Act), and possible rules for inventory control or something similar that will hopefully minimize the possibility of a catastrophic release, like the one in Gunnison, from occurring again.

VI. Approval of proposed changes to the Underground Storage Tank Rules R311, for initial publication and 30-day public comment period (Board Action Item)

Therron Blatter, UST Section Manager for the Division, presented proposed rule changes to the Board. These changes are a consequence of the Energy Act. The Energy Act requires states to implement Additional Measures to Protect Groundwater. States have two options to meet this requirement: require secondary containment and under-dispenser containment on most new tank and piping installations, or require tank and piping manufacturers and installers to have financial responsibility to cover the costs of releases from tanks. After studying the options and consulting with the UST Task Force, the Division is proposing to implement the secondary containment option. This option is more protective of human health and the environment, and would not represent a great departure from current practice, as most new installations are double-walled with secondary containment on tanks and piping. Other proposed rule changes require an owner/operator to notify the Division before using a regulated UST to store an alternative fuel, and clarify the notification requirements for UST installations and testing. The proposed changes are summarized below:

- R311-200-1, Definitions. Add definitions to implement new rules regarding secondary containment in R311-203-6, modify the definition of “As-built drawing” to implement changes proposed for R311-203-3(g) and R311-206-3(a)(7), and add definitions of “Alternative Fuel” and “Biodiesel” to implement a proposed change to R311-203-2(a)(5).
- R311-203-2, Notification. Add a requirement that UST owners/operators notify the Division before using some alternative fuels in their tanks. There may be compatibility issues when these fuels are used in steel tanks, older fiberglass-reinforced plastic tanks, or in tank systems with certain types of fittings, seals, etc. Adding this requirement will help ensure that these problems are minimized. The requirement that owners/operators provide latitude and longitude information for their facilities is removed.
- R311-203-3, New Installations, Permits. This section is re-organized to clarify the requirements for pre-installation notification given by certified installers when they install USTs or UST system components. Notification requirements for specific components are added or removed. The time frame for notification is changed from 30 days to 10 days, and the requirement for submittal by the owner/operator of an as-built drawing after a new UST installation is modified (see also R311-206-3).

- R311-203-5, UST Testing Requirements. Wording is added to clarify the requirements for cathodic protection testing.
- R311-203-6, Requirements for Secondary Containment. This section is added to implement the Secondary Containment option of the Additional Measures to Protect Groundwater section of the Energy Act. After October 1, 2008, secondary containment on tanks and piping, and containment under product dispensers, will be required for new installations and many piping upgrades that occur within 1,000 feet of a community water system or an existing potable drinking water well. Interstitial monitoring will be required for all secondary containment. The rule specifies how an owner/operator may claim an exemption from the requirements if the installation is more than 1,000 feet from a community water system or potable drinking water well.
- R311-206-3, Requirements for Issuance of Certificates of Compliance. To reinforce the requirement that an owner/operator submit an as-built drawing for new UST installations, it is added to the requirements for issuance of a Certificate of Compliance for new installations.

The Division now comes before the Board to seek approval for the initial publication of these rules and to begin the 30-day public comment period in order to begin the rule making process. It is anticipated that if the Board were to approve the initiation of the public comment period, the comment period would begin on June 16, 2008, and end on July 16, 2008, with a public hearing scheduled for July 1, 2008. The Division would then review the comments received and come before the Board in August with a recommendation regarding the proposed rules.

It was moved by John Newman and seconded by Craig Anderson, and UNANIMOUSLY CARRIED that the Proposed Rule Changes to R311, Underground Storage Tank Rules, be approved to go to publication for a 30-day public comment period to begin the formal rulemaking process.

VII. Chemical Demilitarization Section - TOCDF Update

Martin Gray informed the Board that TOCDF is 70% complete in processing the mustard projectiles and 33% complete with the mustard agent campaign. It is anticipated TOCDF will be finished processing the mustard projectiles late this summer and then will initiate the heavy ton container campaign or other munitions.

Mr. Gray stated that as the Army processes the chemical agent, secondary waste is generated. This secondary waste includes DPE suits (mustard contaminated), sampling equipment, etc. This secondary waste has been placed in igloos awaiting treatment. However, for the past eight months, TOCDF has been processing secondary waste and to date, has processed 66,000 lbs. of secondary waste.

A closure plan has been approved for the CAMDS deactivation furnace system.

The Division will soon be recommending action on two permit modifications. The first is to allow TOCDF to process the heavy heel ton containers. The public comment period has ended, and one comment was received and will be addressed. Board members asked if spent carbon was being processed along with the secondary waste. Mr. Gray stated that spent carbon cannot be processed at this time and will remain in storage until a specific waste management solution is developed.

VIII. Other Business

A. Misc. Informational Items.

The Board voted to cancel the Board meeting scheduled for July 10, 2008.

B. The next Board meeting will be held on June 12, 2008 at 9:00 a.m. in the UDEQ Building #2, (Conference Room 101), SLC.

The Board meeting will be held prior to a hearing regarding an appeal of an Underground Storage Tank Corrective Action Plan by Gold Cross Ambulance. Board members were polled and it was determined a quorum will be present. Mr. Christensen requested Board members to review their schedule and if they cannot attend the meeting, contact him as soon as possible, as a quorum needs to be present to hear the appeal.

John Newman asked the Board's legal counsel, Raymond Wixom, that if for some reason a quorum is not present for the hearing, can a committee of the Board members present at the hearing act as the hearing officers and conduct the hearing. Mr. Wixom stated that the Board could appoint (make a motion) and appoint a committee or hearing officer(s) and they could then hear the matter and make a determination on the Order.

Mr. Newman asked if it was appropriate during this meeting (May 8, 2008), to make a motion stipulating that, in the event there is not a quorum available on June 12, 2008, those who are present, would be deemed to be a committee for the purpose of hearing the Gold Cross Ambulance appeal. Mr. Wixom stated the Board can do that, but since the parties are not present at this meeting, they can object. Mr. Wixom also stated that if the Board chooses not to make such a motion today (May 8, 2008) and only six Board members show up at the next meeting for the hearing, those six will not be able to make a motion during that meeting to constitute themselves as a committee, and hence, the hearing would have to be postponed.

Mr. Newman asked the Chairman if he would approve a motion. Mr. Christensen felt there will be a quorum present and expressed a concern in making a motion without the interested parties involved. Mr. Christensen stated that a quorum could be present at the June 12, 2008 Board meeting, either physically or by telephone, and then a motion could be made to appoint a hearing officer or panel of Board members if needed at that time to hear the appeal.

IX. Adjourn

The meeting adjourned at 3:12 p.m.